IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18057 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MUKESH @ MUNNO JIVANJI THAKOR - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR RJ GOSWAMI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mrs. Hansa B. Punani, ld. A.G.P. for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 13/10/2005

ORAL JUDGMENT

1. The order of detention dated 26th July 2005 passed by the Commissioner of Police, Ahmedabad City, respondent no.2 herein is challenged by the detenue that exercised of powers under Subsection 1 of Section 3 of the Gujarat Prevention of Antisocial Activities Act (for short, 'the PASA Act'), 1985 in detaining the detenue as “Bootlegger” as defined under Section 2(b) of the Act is violative of Article 14, 16, 21 and 226 of the Constitution of India.

2. Alongwith the order of detention dated 26th July, 2005, the grounds, on which the order of detention dated 26th July, 2005 was passed, were supplied to the detenue as per requirement of

Subsection 1 of Section 9 of the Act. It reveals three offences registered against the detenue vide different crime registered numbers with Prohibition Station North Zone, showing that the detenue is indulged into illegal activities of selling of liquor in the area of his residence and such activities of the detenue causes the disturbance to the public order and general health of the public. It is also stated in the order of detention that remedy under ordinary laws like procedure under Section 93 of the Bombay Prohibition Act, 1949 and under Section 57(c) of the Bombay Police Act, 1951 are not adequate and therefore recourse is taken to the provisions of this Act. In the penultimate para, the detaining authority has also taken into consideration that for the offences at sr nos. 1 and 2 the detenue is released on bail and for the offence mentioned at sr. no.3 he is under judicial custody and has arrived at the subjective

satisfaction that the detenue may prefer bail application and the concerned court grant such application for bail and in that eventuality, after getting enlarged on bail, the detenue may prefer and continue to indulge into similar prejudicial, antisocial and criminal activities and thus, on the basis of aforesaid materials the order of detention is passed on 26th July, 2005.

3. The learned advocate Mr.R.J.Goswami appearing for the detenue, has contended that the order of detention is vulnerable on numbers of the grounds as stated in the petition. However, he restricted his arguments on the ground that registration of offences registered under the provisions of the Bombay Prohibition Act, 1949, by itself is not sufficient to affect the public order or general health of the public detrimentally. He has further submitted that branding the detenue as

bootlegger is a different aspect, but there has to be nexus that the prejudicial activities which has bearing on disturbance of public order and general health of the public. According to him, except the registration of crimes as stated in the grounds supplied to the detenue on the date on which the order of detention was passed, no other credible materials did exist before the detaining authority to come to the conclusion, after application of mind to the facts germane to the passing of the order and arriving at the subjective satisfaction that even if the detenue releases on bail by the court of law in events of his filing application of bail, he may continue in indulging into similar and prejudicial activities in future. For all these conclusions, the concerned authority has not stated anything in the order of detention and after recital of certain phrases similar in such type of cases, the order of detention is

passed and, therefore, according to her the same is not preventive but is punitive.

In view of the above mentioned submissions, a support drawn from the decision of this Court in Letters Patent Appeal No.223/2000 and also of the Apex Court, AIR 1989 SC 491 and AIR 2003 SC 971 and submitted that in the facts of the present case also, the law laid down by the courts in the decision (Supra) is applicable and the order of detention be quashed and set aside.

4. To counter the submissions of the learned advocate for the petitioner, Mrs. Hansa B. Punani, learned Assistant Government Pleader has submitted and drawn the attention of the court to the affidavit in reply filed by the detaining authority where it is mentioned that the detaining authority was satisfied and the subjective satisfaction was arrived at on the

basis of relevant materials, including the registration of crime registered as mentioned in the order of detention. It was submitted, that there was sufficient material from the records of the case disclosing that antisocial activities of the detenue are having the potential to disturb the public order and public health, and, therefore, even registration of solitary crime under the provisions of Bombay Prohibition Act, 1949 is sufficient enough to warrant exercise of powers under section 2(b) of the Act. Therefore, according to her, this is not a case where the powers under Article 226 of the Constitution of India are required to be exercised.

5. Having considered the rival submissions, perused the relevant records of the case including the affidavit in reply filed by the detaining authority it is evident that there is a registration of three crimes for the offences

punishable under various sections of the Bombay Prohibition Act, 1949. It is pertinent to note that though it is stated in the order though it is also stated in the grounds supplied alongwith the order of detention to the detenue and reaffirmed in the affidavit in reply about the prejudicial activities of the detenue indulging into bootlegging and thus, disturbing the public order and public health, there appears to be absence of any connecting relevant materials by which it can be concluded that the activities of the detenue as a bootlegger have a potential or gravity to disturb even tempo of public life or normal life. Simply registration of crimes and seizure of bottles of IMFL, by itself cannot lead to a presumption that general health of the public is also likely to be affected.

6. In absence of the materials for arriving at such subjective satisfaction about the

prejudicial activities of the detenue disturbing the public order and general health of the public and further to assume about preferring bail application by the detenue and grant of such bail application by the competent court of law and further that the detenue to continue in such activities on the order of bail, all will have to be based on relevant and credible materials and in the present case when the detenue has not been apprehended or even in a judicial custody, conclusion of the detaining authority about events in future to take and to pass the order of detention is a case of subjective satisfaction being vitiated on the ground of non-application of mind on the part of the detaining authority to such aspects and on this ground also, impugned order requires to be quashed and set aside.

That registration of crimes for the offences punishable under the Bombay Prohibition Act, 1949 by itself cannot said to have bearing or

nexus on the disturbance of the public order or the general health of the public and, therefore, the decision reported in the case of **Darpan Kumar Sharma Vs. State of T.N.,** reported in 2003 (2) SCC 313 is applicable in the facts of the present case particularly para-5 which reads as under:-

> “5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1,000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent, affect the peace prevailing in the locality and it may also affect law and order, but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of “goonda” the acts prejudicial to public

order are “when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order”

The important question considered by the Supreme Court “ whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order” is very well explained in the decision reported in 2000 (4) GLR 3623 in the case of **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors.** as under:-

“ Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of

society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

7. As rightly submitted by the learned advocate for the petitioner, the decision reported in Letters Patent Appeal No.223/2000, decision reported in the case of **Darpan Kumar Sharma Vs. State of T.N.,** reported in 2003 (2) SCC 313 AIR as held by the Apex Court and our High Court, the registration of offence by itself can not have effect of disturbing the public order or general health of public except the specific

materials on the basis of which reliance is placed by the detaining authority for passing the order, and, therefore, the order of detention passed by the respondent no.2 herein, is quashed and set aside.

8. The detenue Mukesh @ Munno Jivanji Thakor is ordered to be set at liberty if not required in any other offence by any other authority. Direct Service is permitted. Rule is made absolute.

(ANANT S. DAVE, J.)

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